

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 24-34, 38, 39, 41, 43, 44, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philen et al. (US 6 308 663) in view of Hull et al. (US 5 497 733).

Regarding independent claims 24, 47 and 48:

Philen discloses an animal restraint comprising:

a belt (12) having first and second ends, an elongate linker (18) the belt having rings at each end with apertures (32 and 34);

the elongate linker passing through a ring on the belt and terminating in a stopper (36);

wherein a pulling force directed away from the girth applied to the stopper allows (i.e., is capable of) the girth of the collar to decrease to a size substantially similar to the animal's girth without choking the animal.

The belt is inherently greater than the girth of the animal (in order to fit around the animal rather than through the animal), but does not disclose the device absent of choking.

Hull discloses an adjustable restraint which does not harm the animal while still providing the proper "choke" training (col 3, lines 55-63).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Philen to lessen the choking nature of the restraint as taught by Hull for the well-known advantage of preventing harm to the animal while still providing proper the training.

It is noted that the disclosure describes “choking” as “significant discomfort” (page 3, lines 5-7) caused by “excessive restriction” (page 7-8), and thus the examiner takes the position that any lessening of the choking to prevent harm would render the device void of choking as defined by the disclosure.

Regarding claim 25:

The discussion above regarding claim 24 is relied upon.

Philen as modified renders the animal girth as a neck girth.

Regarding claims 26 and 27:

The discussion above regarding claim 24 is relied upon.

Philen as modified renders the movement of the linker through the aperture providing a noise (chains through metal rings inherently produce a noise), which may assist in training (classical conditioning, whereby the animal equates the noise with the action of the collar).

Regarding claims 28-31:

The discussion above regarding claim 24 is relied upon.

Philen as modified renders the link as a twist-linked chain (as seen in the figures), the metal material and weight of such optimizing the noise produced.

Regarding claims 32-34:

The discussion above regarding claim 24 is relied upon.

Philen as modified renders a placement device to adjust the belt length comprising a doubled over portion of the one belt end (on the left), a buckle having a buckle tongue (42) and one or more holes for receiving the tongue (as seen in Fig 2).

Regarding claims 38, 39, 41, 43 and 44:

The discussion above regarding claim 24 is relied upon.

Philen as modified renders the two belt ends having rings (32 and 34), the rings either being O-rings (as depicted) or D-rings (col 2, line 67 – col 3, line 2), and an annular stopper (as depicted).

3. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Philen et al. ('663) in view of Hull et al. ('733) as applied to claim 24 above, and further in view of David et al. (US 5 732 660).

Philen discloses a nylon belt, but do not disclose the belt material as leather.

David discloses a belt made of leather or nylon webbing (col 3, lines 23-26).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Philen to use leather as taught by David as this is a well-known material for forming belts, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331.

Response to Arguments

4. Applicant's arguments filed 16 July 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that Philen fails to show specific lengths of the device (page 8), the claim only requires the device to be larger than the girth of the animal, which is inherent as the device fits around the animal rather than through it. Further, the minimum size is a functional capability rendered possible by the adjustability of the belt of Philen.

5. Applicant's further arguments with respect to claims 24, 47 and 48 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is 571-272-0474. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W. S./
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/Tien Dinh/
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